

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

TRUSTEES OF EMPIRE STATE
CARPENTERS ANNUITY,
APPRENTICESHIP, LABOR-MANAGEMENT
COOPERATION, and PENSION AND
WELFARE FUNDS,

Plaintiffs,

MEMORANDUM & ORDER

14-CV-3316 (JS) (AKT)

-against-

L&P INTERIORS, INC.,

Defendant.

-----x

APPEARANCES

For Plaintiffs: Charles R. Virginia, Esq.
Elina Burke, Esq.
Richard B. Epstein, Esq.
Virginia & Ambinder LLP
40 Broad Street, 7th Floor
New York, NY 10004

For Defendant: No appearances.

SEYBERT, District Judge:

Currently pending before the Court are: (1) Plaintiffs' motion for default judgment (Docket Entry 11); and (2) Magistrate Judge A. Kathleen Tomlinson's Report and Recommendation ("R&R"), recommending that this Court grant in part and deny in part the motion for default judgment (Docket Entry 20). For the following reasons, the Court ADOPTS the R&R in its entirety.

BACKGROUND

Plaintiffs Trustees of Empire State Carpenters Annuity, Apprenticeship, Labor-Management Cooperation, Pension and Welfare Funds ("Plaintiffs") commenced this action against defendant L&P Interiors, Inc. ("Defendant"), seeking to confirm an arbitration

award rendered in connection with a collective bargaining agreement between non-party union Northeast Regional Council of Carpenters and Defendant. On October 13, 2014, Plaintiffs filed an Affidavit of Service, affirming that the Summons and Complaint were served on Defendant by service on the Secretary of State on September 29, 2014. (Docket Entry 6.) Defendant did not answer or otherwise respond to the Complaint, and on October 22, 2014, Plaintiffs requested a Certificate of Default. (Docket Entry 8.) The Clerk of the Court certified Defendant's default on October 27, 2014. (Docket Entry 10.) On October 29, 2014, Plaintiffs moved for a default judgment. (Docket Entry 11.) On December 19, 2014, the undersigned referred the motion to Judge Tomlinson for a report and recommendation as to whether the motion should be granted.

Judge Tomlinson issued her R&R on August 14, 2015. (Docket Entry 20.) The R&R recommends that the Court grant default judgment and award Plaintiffs damages in the amount of \$7,117,584.38, consisting of: (1) \$5,928,675.90 in unpaid contributions; (2) \$1,185,735.18 in liquidated damages; (3) \$2,020.00 in attorneys' fees; and (4) \$1,153.30 in costs and disbursements. (R&R at 29.) However, the R&R further recommends that Plaintiffs' request for an award of interest on the unpaid contributions be denied without prejudice and with the right to renew upon providing adequate support and documentation.

DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b) (1) (C). If no timely objections have been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

Objections were due within fourteen (14) days of service of the R&R. The time for filing objections has expired, and no party has objected. Accordingly, all objections are hereby deemed to have been waived.

Upon careful review and consideration, the Court finds Judge Tomlinson's R&R to be comprehensive, well-reasoned, and free of clear error, and it ADOPTS the R&R in its entirety.

CONCLUSION

For the foregoing reasons, Judge Tomlinson's R&R (Docket Entry 20) is ADOPTED in its entirety and Plaintiffs' motion for a default judgment (Docket Entry 11) is GRANTED IN PART and DENIED IN PART. Plaintiffs' motion is granted insofar as it seeks the following damages in the amount of \$7,117,584.38, consisting of: (1) \$5,928,675.90 in unpaid contributions; (2) \$1,185,735.18 in liquidated damages; (3) \$2,020.00 in attorneys' fees; and (4) \$1,153.30 in costs and disbursements. However, the motion is

DENIED WITHOUT PREJUDICE with respect to Plaintiffs' request for interest on the unpaid contributions. Plaintiffs have thirty (30) days from the date of this Memorandum and Order to renew their request for interest with adequate explanation and documentation.

SO ORDERED

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: September 18, 2015
Central Islip, New York